LE COPY

PETITION NOT PRINTED

FILED
APR 15 1959
JAMES R. BROWNING, Clerk

No. 778

In the Supreme Court of the United States

OCTOBER TERM, 1958

SAMUEL BROTT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
CHARLES K. RICE,
Assistant Attorney General,
JOSEPH F. GOETTEN,
RICHARD B. RUHRMAN,
Attorneys,
Department of Justice,
Washington 25, D. C.

PETITION NOT PRINTED

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statute involved	2
Statement	2
Argument	5
Conclusion	6

CITATIONS

Cases:

Lloyd v. *United States*, 226 F. 2d 9	5
United States v. *Epstein*, 154 F. 2d 806, certiorari denied, 328 U. S. 858	6
United States v. *Potson*, 171 F. 2d 495	6
Warszower v. *United States*, 312 U. S. 342	6

Statute:

18 U.S.C. 1001	2

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 778

SAMUEL BROTT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 12-14) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on February 24, 1959 (Pet. 12), and the petition for a writ of certiorari was filed on March 18, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial court erred in admitting as rebuttal evidence—for the purpose of discrediting peti-

tioner's defense that a substantial part of certain concealed assets arose from cash on hand accumulated by his wife prior to 1942—an affidavit signed by petitioner and submitted to his draft board in 1942 in which he stated that he and his wife had no property of any kind, where the fact that the affidavit related to petitioner's draft status was withheld from the jury.

STATUTE INVOLVED

18 U.S.C.:

SEC. 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was indicted in the United States District Court for the Eastern District of New York on four counts of knowingly and wilfully making and causing to be made false and fraudulent representations in a matter within the jurisdiction of the United States Treasury Department, by submitting to the Internal Revenue Service on April 10, 1954, false net worth statements. The first count alleged that petitioner's net worth as of December 31, 1950, as disclosed by his sworn statement, was $3,150, which was understated by $7,737.09 by reason of omitted assets consisting of

United States Savings Bonds in the amount of $6,262.50 and a bank account at the Union Square Savings Bank in the amount of $1,474.59. The last three counts alleged the omission of the same assets, and Counts Three and Four alleged, in addition, balances of $3,010.82 and $859.19 in The Bank for Savings as of December 31, 1952, and December 31, 1953, respectively. (R. iii-vii.)[1] After a jury trial, petitioner was convicted on all four counts. On June 19, 1958, he was sentenced to concurrent prison terms of two years on each of the four counts. (R. 75A-76A.)

The evidence to support the verdict, the sufficiency of which is not challenged, may be summarized as follows:

Petitioner and his wife filed joint income tax returns for 1950, 1951, and 1953, and filed no return for 1952. Their only reported income was from petitioner's wages as follows (Govt. Exs. 2, 14, 15):[2]

1950	$2,500
1951	2,025
1952	1,860

Petitioner assured the internal revenue agent, at the outset of the investigation, that he was able to support himself, his wife and his two children on $2,500 a year. The agent asked for a statement of assets and liabilities, and some months later petitioner submitted the statements (each of which was sworn to by petitioner before a notary public) purporting to show that his net worth

[1] References to the record in the court below are designated "R." References to the transcript of proceedings at the trial are designated "Tr." A copy of each has been lodged with the Clerk of this Court.

[2] There was evidence that in 1951 petitioner was taking numerous bets on baseball games, and that when accosted by a policeman he had $813 of currency in his possession. (Tr. 635-636.)

at the end of each of the four years ranged between $3,150 and $4,250. (Govt. Ex. 6; Tr. 15-16, 97-100). The agent's investigation disclosed the omission from these statements of Government bonds and bank accounts, resulting in understatements of net worth ranging between $7,737.09 and $12,441.74. (Govt. Exs. 3, 4, 8, 9; Tr. 110-116.)[3]

In November, 1954, the agent asked petitioner to appear at his office with a list of the bonds that he owned and the bank books for the accounts omitted from his statements. (Tr. 110-116, 125-126.) The next day petitioner brought in the bonds and the bank books, congratulated the agent on having done a good job, and asked when his punishment would be meted out. (Tr. 116.) On January 17, 1955, petitioner told the agent that he had had between $7,000 and $8,000 in currency in a green tin box (Tr. 233) but ten days later he admitted that this story was false (Tr. 241).

Petitioner did not testify at the trial, but his wife testified that she had saved $3,700 prior to her marriage to petitioner in 1941, and had received almost $1,000 in wedding gifts (R. 9A; Tr. 456); that she had kept this money in a little leather box (Tr. 564-566); and that this money was used to purchase some of the Government bonds and to make some of the deposits in the bank accounts. (Tr. 456). In rebuttal, the prosecutor read into evidence relevant portions of an affidavit signed by petitioner in 1942, in which he stated that "We have no other source of income other than the

[3] The Government bonds constituted the bulk of the omissions with respect to each year. The bank accounts were in the name of petitioner as trustee for his wife and minor son, but it was proved that all withdrawals were paid to petitioner. (Tr. 110-116; Govt. Exs. 4, 5, 10.)

monies that I actually earn, which average about $50 weekly"; that should a certain event occur[4] "my wife and child would become a public charge"; and that "We have no bank account. We own no property. We have not any possession of any kind from which my wife and child can derive an income." (R. 35A-36A.)

ARGUMENT

Petitioner's sole contention, that the Government should not have been permitted to read in evidence portions of his 1942 affidavit to his draft board, is without merit. The argument is based on the erroneous assumptions (1) that petitioner's wife was telling the truth at the trial, when she testified that most of the assets in question came from savings she had accumulated prior to 1942; (2) that petitioner's 1942 affidavit to the effect that he and his wife had no assets was false; and (3) that the affidavit was read in evidence for whatever bearing it might have on the issue of petitioner's intent in submitting the false statements to the Treasury agent in 1954.[5] The converse is true. The affidavit was read to prove that the wife was testifying falsely at the trial when she said they had the cash on hand in 1942. (R. 10A-13A, 23A, 33A-35A, 56A.) It was received not to establish petitioner's intent, but as evi-

[4] The fact that this affidavit was submitted to petitioner's draft board in connection with an application for deferment from military service was withheld from the jury. (R. 34A-36A.)

[5] It is on the basis of this distortion of the Governments' position that petitioner alleges a conflict between his case and *Lloyd* v. *United States*, 226 F. 2d 9 (C.A. 5th). The *Lloyd* case involved the admission of evidence of tax crimes committed by the taxpayer many years prior to the years for which he was being prosecuted. The Fifth Circuit held that this was too remote in time to have probative value. That issue is not involved in the instant case.

dence of the fact that there was no such cash. (R. 10A-13A, 16A-23A, 33A; Tr. 645-646.) It was, as the Court of Appeals said (Pet. 14), "directly in point on an issue the defendant had made important" and as such was "clearly admissible." *United States* v. *Epstein*, 154 F. 2d 806, 810 (C. A. 2d), certiorari denied, 328 U. S. 858; *United States* v. *Patson*, 171 F. 2d 495, 499 (C. A. 7th); Cf. *Warszower* v. *United States*, 312 U. S. 342, 347-348. In short, it was admissible as independent evidence to show that the concealed assets could not have arisen from the wife's savings, as the defense contended, because she had no savings.

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

JOSEPH F. GOETTEN,
RICHARD B. BUHRMAN,
Attorneys.

APRIL 1959.

☆ U. S. GOVERNMENT PRINTING OFFICE 1959 [illegible] 1284